STATE OF MICHIGAN

COURT OF APPEALS

HARPER WOODS FIRE FIGHTERS ASSOCIATION, Plaintiff-Appellee, v CITY OF HARPER WOODS, Defendant-Appellant.	UNPUBLISHED January 4, 2011 No. 293062 Wayne Circuit Court LC No. 08-123054-CZ

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

This is an appeal arising from plaintiff Harper Woods Fire Fighters Association's (Fire Fighters) motion for injunctive relief against defendant City of Harper Woods (City). The Fire Fighters alleged that the City's resolution, which created a public safety department and implemented a cross-training program, violated section 4.5 of the City Charter. The Fire Fighters moved for summary disposition under MCR 2.116(C)(10). At the hearing on the motion for summary disposition, the trial court ruled in favor of the Fire Fighters and granted their motion for injunctive relief. The City now appeals as of right the trial court's injunction. We affirm.

I. BASIC FACTS

The City adopted a charter in 1951. Section 4.5 of the City Charter provides:

> The council may by ordinance create additional administrative offices and may by resolution combine any administrative offices in any manner it deems necessary or advisable for the proper and efficient operation of the city, except that the offices of chief of police and fire chief may not be combined nor may one person be appointed to both positions.
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> There shall be maintained both a police department and a fire department, which departments shall not be combined.
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> Except as may be otherwise provided by statute or this Charter, the council shall establish by ordinance such departments of the city as it deems necessary or advisable and shall prescribe therein the functions of each

department and the duties, authorities and responsibilities of the officers of each department.

Until the events at issue arose in this case, the City has maintained separate police and fire departments. Historically, the fire department employees, represented by the International Association of Fire Fighters (IAFF) Local 1188, had not performed law enforcement services that the police department customarily performed. Also, the police department employees, represented by the Police Officers Labor Council (POLC) and the Command Officers Association of Michigan (COAM), had not performed any fire suppression or medical services that the fire department customarily performed.

In 1996, the City placed on the ballot a proposed a plan to implement cross-trained police and fire services. However, a majority vote rejected this proposal.

On February 20, 2008, the City's Chief of Police, Randolph Skotarczyk, wrote a memorandum to the City Manager, James E. Leidlein, discussing "Alternative Service Delivery." In the memorandum, Skotarczyk stated, "As you are aware we have been discussing alternative service delivery methods and how to merge responsibilities of the police and fire departments." Skotarczyk discussed worries that the parties would have concerning this possible implementation and how to resolve them.

On April 21, 2008, the City Council met to discuss proposed resolutions. Members of the Council emphasized the issue of public safety during this meeting. The Council discussed the positive impacts of a public safety department. They believed this new department was necessary because of the spike in crime and the City's budget concerns. During this meeting, the Council referred to the new department as "a blended police and fire service model." At the end of the meeting, members of the Council unanimously carried a motion to withdraw the collective bargaining proposal with the Fire Fighters and begin implementing a public safety department.

On May 5, 2008, the City Council passed a resolution, which provided as follows:

> NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Harper Woods hereby directs that the City shall establish a Department or Division of Public Safety and shall immediately begin the cross training of Police Officers to be fire fighters and emergency medical technicians and fire fighters who so desire, to be cross trained as police officers.

In the resolution, the City Council stressed the need for this program due to both a need for police/fire services and the City's lack of ability to generate revenue. The City claimed that it adopted this resolution to have more people with training out on the City's streets. The City further stated that cross-training police and fire fighters could aid in certain situations, such as when there is a fire but the police are the first to respond.

On September 15, 2008, the City reached a new collective bargaining agreement with the two police unions, COAM and POLC. The agreement provided that the members of both unions would agree to receive cross training and licensure as fire fighters. In exchange, the police union employees would receive a five percent wage increase as well as another five percent premium increase effective January 1, 2009. The agreement also stated that the actual intention of it was

"a phased implementation of public safety and that eventual intent of the City Council is to have a fully integrated 'Public Safety Department' through attrition."

The City acknowledged that it could not combine the police and fire departments under Section 4.5 of the City Charter. The City also stated that the only move it could make was to enter into collective bargaining with the fire fighters as it did with the police. However, the City Council stated at its meeting on April 20, 2008, that the fire department showed no interest in an agreement to combine departments. City Manager, James Leidlein, stated that the cross-training program had not affected any member of either the police or fire departments.

On October 22, 2008, the Fire Chief, Sean Gunnery, issued a memo to all IAFF Local 1188 members. In the memo, Fire Chief Gunnery requested that the Fire Fighters submit any concerns they had in regard to the cross-trained personnel starting to respond to fire scenes.

On November 13, 2008, Fire Chief Gunnery issued a form titled, "Cross Trained Personnel Orientation," to the cross-trained police officers. On November 14, 2008, the Fire Chief informed his department that cross-trained police officers would have assigned lockers in the fire department and would be allowed to store their police revolvers there.

On November 17, 2008, the City Council discussed the newly implemented cross-training program. The Council stated that seven police officers had completed cross training and were familiar with the firefighting equipment. The Council further stated that cross training would continue until six more police officers completed the training. Once this training was completed, the City Council intended to place six cross-trained officers on a 24-hour schedule and use them for both police and fire suppression duties.

Patrick Rollison is the Union President for the Harper Woods Fire Fighters Association, IAFF Local 1188. In his affidavit, he stated that in May or June 2008, the City Manager, James Leidlein, notified the two fire fighters with the least seniority that they would be terminated unless they agreed to cross train with the police academy. He further explained that Leidlein withdrew this notice only after the filing of the original complaint against the City on September 10, 2008.

Rollison also asserted that in meetings with City representatives, the representatives explained that they intended to cross-train public safety officers to participate in duties performed by employees of the Fire Department. Rollison explained further that City representatives informed him of their intentions to eventually replace all fire fighter employees with cross-trained public safety officers.

In mid-September 2009, the Fire Fighters brought a complaint against the City seeking declaratory and injunctive relief. In early April 2009, the Fire Fighters moved for summary disposition under MCR 2.116(C)(10). The City filed a response and cross motion for summary disposition. At the hearing for summary disposition, the trial court granted the Fire Fighters' request for injunctive relief, precluding the City from implementing any further cross training. The trial court explained that combining the functions of the police and fire departments was a combination of the departments and that the City violated the Charter by its actions. The City of Harper Woods now appeals.

II. CHARTER INTERPRETATION

A. STANDARD OF REVIEW

The City argues that Section 4.5 of the City Charter is unambiguous and provides no language prohibiting cross training. It also believes that a proper interpretation of the ordinance clearly allows it to establish a public safety department and cross-training program. The City believes that the trial court improperly added words to the Charter by comparing the implementation of the voluntary cross-training program with the combination of the police and fire departments. This Court reviews de novo a trial court's decision regarding a motion for summary disposition in a declaratory relief action.[1] This Court also reviews de novo statutory interpretation, including construction and interpretation of a city charter or ordinance, as a question of law.[2]

B. LEGAL STANDARDS

The rules governing the construction of statutes apply with equal force to the interpretation of municipal ordinances and city charters.[3] The primary goal of judicial interpretation of statutes is to discern and give effect to the intent of the Legislature.[4] Courts are to construe statutes in a manner as the Legislature intended when it passed the statutes and not in light of subsequent developments.[5] In order to determine the legislative intent, a court must look at the specific language of a statute.[6] When a legislative body has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction.[7] Courts should read statutory provisions as an entire statute in order to produce a harmonious whole.[8] Courts should give meaning to every word of a statute, and they should treat no word as surplusage or render any word nugatory if at all possible.[9]

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[1] *Mich Educ Employees Mut Ins Co v Turow*, 242 Mich App 112, 114; 617 NW2d 725 (2000).

[2] *Oakland Co Bd of Co Rd Comm'rs v Mich Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998).

[3] *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998).

[4] *In re MCI*, 460 Mich 396, 411; 596 NW2d 164 (1999).

[5] *Wayne Co Bd of Rd Comm'rs v Wayne Co Clerk*, 293 Mich 229, 235-236; 291 NW2d 879 (1940).

[6] *House Speaker v State Admin Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993).

[7] *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995).

[8] *People v Williams*, 236 Mich App 610, 613; 601 NW2d 138 (1999).

[9] *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 714; 664 NW2d 193 (2003).

C. APPLYING THE STANDARDS

The City cites *Pittsfield Charter Twp v Washtenaw Co*[10] in support of its argument. In *Pittsfield*, Washtenaw County wished to construct a homeless shelter on land that it owned.[11] Pittsfield Township had a zoning ordinance that designated the land for use as limited industrial.[12] The ordinance did not expressly or conditionally allow the land to be used in the proposed manner.[13] However, there was a dispute because the County Commissioners Act (CCA) gave the County the authority to determine the designation of county buildings, but also stated that the authority was subject to requirements of law.[14] Specifically, the CCA provides that a county board of commissioners may "[d]etermine the site of, remove, or designate a new site for a county building. *The exercise of the authority granted by this subdivision is subject to any requirement of law that the building be located at the county seat*."[15] The County believed that MCL 46.11 gave it the right to build the homeless shelter because of the wide range of authority it was given in the provision.[16] The Township believed that the second sentence of the provision restricted the county to comply with the zoning ordinance.[17]

The Michigan Supreme Court acknowledged that it had to analyze the legislative intent of the provision in order to interpret it correctly and rule on the priority dispute.[18] The Supreme Court looked to the surrounding circumstances of how and when the provision was created in order to establish the Legislature's intent.[19] The Supreme Court concluded that reading the statute closely gave higher priority to the County.[20] The Supreme Court reasoned that the CCA only stated one limitation on the County's authority to site buildings.[21] According to the Supreme Court, "We believe this shows that the Legislature, by explicitly turning its attention to

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[10] *Id.*

[11] *Id*. at 704.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 705.

[15] MCL 46.11(b) (emphasis added).

[16] *Pittsfield*, 468 Mich at 706.

[17] *Id*.

[18] *Id*. at 709.

[19] *Id*. at 710.

[20] *Id*. at 710-711.

[21] *Id*. at 711.

limits on the county siting power and deciding on only one limitation, must have considered the issue of limits and intended no other limitation."[22]

The City argues that the ruling in *Pittsfield* compares favorably to its position. The City believes we should interpret Section 4.5 of the City Charter to give it full discretion and power to implement a cross-training program for the department of public safety. We disagree. Section 4.5 states in part, "the council shall establish by ordinance such departments . . . as it deems necessary or advisable and shall prescribe therein the functions of each department." However, this provision gives the City Council power, "[e]xcept as may be otherwise provided by statute or this Charter." And Section 4.5 provides a specific exception to the City Council's power by stating, "except that the offices of chief of police and fire chief may not be combined nor may one person be appointed to both positions." Section 4.5 also specifically states, "There shall be maintained both a police department and a fire department, which departments shall not be combined." Therefore, while a part of Section 4.5 gives the City authority to create "departments by ordinance" as well as prescribing their functions, it explicitly prevents the City from combining the police and fire departments.

Moreover, as stated, statutes are to be construed in a manner as was intended when they were passed and not in light of subsequent developments.[23] When the City passed its Charter in 1951, the neighboring areas of Grosse Pointe Woods and Grosse Pointe Shores already had combined safety departments similar to the department of public safety in this case. Thus the City and its inhabitants had models around it that it could have considered and even duplicated. Since the City declined to adopt a public safety department when it created its Charter and also put in a provision prohibiting the City Council from combining the police and fire departments, the legislative intent was clearly not to combine these departments. Further, in 1996, the City held an election with a proposal for cross-trained police and fire departments. The voters did not pass this proposal.

Because we conclude that Section 4.5 prevents the City from implementing its cross-training program, we now analyze the surrounding circumstances concerning the cross-training program to determine whether the City's actions actually constituted a combination of the police and fire departments.

We believe that the City's actions did constitute an impermissible combining of the police and fire departments. The City gave several indications that its intent was to combine these departments, while avoiding actually calling it a combination. First, Police Chief Skotarcyzk's memorandum to the City Manager, James E. Leidlein, discussed "how to merge responsibilities of the police and fire departments." At a meeting, the City Council referred to the new public safety department as "a blended police and fire service model." Also, several cross-trained police officers were given lockers in the fire department. Further, James Leidlein notified the two least-senior fire fighters that they would be terminated unless they agreed to

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[22] *Id.*

[23] *Wayne Co Bd of Rd Comm'rs*, 293 Mich at 235-236.

cross train with the police academy. And most notably, City representatives also informed Patrick Rollison that their intent was eventually to replace all fire fighter employees with cross-trained public safety officers. All of these discussions and actions show that the City was, in actuality, combining the functions of the departments.

The City apparently argues that having two entities called the police department and the fire department meets the requirements of Section 4.5. However, as the new public safety department and cross-training program progressed, the functions of the police and fire departments became more and more congruent. Therefore, we agree with the trial court that the City could not combine the functions of two departments without combining the departments.

Additionally, the City argues that preventing the cross-training program creates an absurd result contrary to public policy. In *Detroit Int'l Bridge Co v Commodities Export Co*, this Court acknowledged that when interpreting a statute, the Court would look at the legislative intent to ensure the result would not be illogical.[24] This Court also recognized that a statute need not be applied literally if no reasonable lawmaker could have envisioned the actual result.[25] The City asserts that interpreting Section 4.5 to prohibit its cross-training program would result in harm to the public. The City believes that the overall purpose for public safety services is to serve and protect, and a cross-training program is the most sensible way to accomplish this because it gives more people the skills to help others in emergency situations.

We disagree. Suggesting that not combining the functions of these departments will result in dangerous situations is itself absurd. Having separate departments for fire emergencies and law enforcement may allow both departments to function properly in a majority of situations. The trial court's ruling does not suggest that the police department is prohibited from acting during a fire emergency. The trial court stated that assisting any person in danger during fire emergencies is well within the police department's authority. This ruling allows both the police and fire departments to function properly as separate entities and does not create an absurd result contrary to public policy.

We affirm.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood

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[24] *Detroit Int'l Bridge Co v Commodities Export Co*, 279 Mich App 662, 674; 760 NW2d 565 (2008).

[25] *Id*. at 675.